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FEDERAL ELECTION COMMISSION
999 E Street, N.W.
Washington, D.C. 20463

FIRST GENERAL COUNSEL'S REPORT

SENSITIVE

MURs: 5069, 5132

DATE COMPLAINT FILED:

August 11, 2000 (MUR 5069); October 27,
2000 (MUR 5132)

DATE OF NOTIFICATION:

August 22, 2000 (MUR 5069); November 3,
2000 (MUR 5132); June 14, 2001

DATE ACTIVATED:

May 23, 2001 (MUR 5069); May 18, 2001
(MUR 5132)

EXPIRATION OF STATUTE OF
LIMITATIONS:

June 30, 2004 (MUR 5069); June 30, 2004
(MUR 5132)

STAFF MEMBER: John Vergelli

COMPLAINANTS:

Democratic Congressional Campaign Committee
(MUR 5069)

David Plouffe (MUR 5069)

Angel M. Cintrón-Garcia (MUR 5132)

RESPONDENTS:

Lopito, Ileana, & Howie, Inc.

Carlos Rodríguez

Jose Rodriguez Amoros

Anibal Acevedo Vilá

Comité Acevedo Vilá Comisionado 2000, Inc.

Rámon Velasco, Treasurer

RELEVANT STATUTES:

2 U.S.C. §§ 434(a), (b)

2 U.S.C. § 441b

2 U.S.C. § 441a(f)

11 C.F.R. § 100.7(a)(4)

11 C.F.R. § 104.9(a)

11 C.F.R. § 116.3

11 C.F.R. § 116.4

23-04-406-2318

INTERNAL REPORTS CHECKED: Disclosure reports

FEDERAL AGENCIES CHECKED: None

I. GENERATION OF MATTER

MUR 5069 was generated by a complaint filed by David Plouffe, Executive Director of the Democratic Congressional Campaign Committee (DCCC) on behalf of DCCC. Mr. Plouffe and DCCC allege that the Comité Acevedo Vilá Comisionado 2000, Inc., Aníbal Acevedo Vilá, and Ramón Velasco, Treasurer (collectively, the Committee) received an illegal corporate contribution from Lopito, Ileana, & Howie, Inc..(LIH), of which Carlos Rodriguez is President, when LIH advanced the Committee over \$650,000 in media costs during the 1999 primary for the Democratic nomination for Resident Commissioner.¹ Mr. Plouffe and DCCC also allege that the Committee failed to report certain disbursements for the payroll taxes paid for campaign workers, or alternatively, that the Committee violated Puerto Rican wage and hour laws by failing to pay the payroll taxes.

MUR 5132 was generated by a complaint filed by the Hon. Angel M. Cintrón-García, Majority Leader of the Puerto Rican House of Representatives. Mr. Cintrón-García echoes the allegations addressed in MUR 5069 about the purported illegal campaign contribution from the LIH, and the non-reporting (or non-payment) of the payroll taxes for campaign workers. Mr. Cintrón-García's complaint also alleges that a firm named Arteaga & Arteaga created and

¹ The Resident Commissioner is elected to serve a four-year term. 48 U.S.C.A. § 891. He or she may serve on and vote in committees of the U.S. House of Representatives, and may vote as a member of the Committee of the Whole, but not as a member of the House. P.L. No. 91-150 (1970). If the Resident Commissioner's vote is decisive in the Committee of the Whole, an automatic revote is taken in the full House without his or her participation. See, generally, *Michel v. Anderson* 14 F.3d 623 (D.C. Cir. 1994). Election to the office is subject to the FECA. 2 U.S.C. § 431(3).

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maintained a website for the Committee, but that the Committee's disclosure reports do not reveal payments to Arteaga & Arteaga.²

II. FACTUAL AND LEGAL ANALYSIS

² Both complaints name Jose Rodriguez Amoros as a respondent in their respective opening paragraphs; however, neither complaint mentions or refers to this individual thereafter. Noting that an individual by that name appears in the Committee's campaign reports as a vendor to whom payments were made, OGC attempted to notify the individual at the address indicated in the campaign report. To date, no reply of any kind has been received.

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18 **B. ALLEGED FAILURE TO REPORT DISBURSEMENTS FOR PAYROLL**
19 **TAXES.**

20 **1. Law.**

21 Political committees must file periodic reports of receipts and disbursements. 2 U.S.C. §
22 434(a)(1). Such reports must include the name and address of each person to whom the

committee makes aggregate disbursements of \$200 or more in a calendar year (or within the election cycle in the case of an authorized committee). 11 C.F.R. § 104.9(a).

2. Facts.

Both complaints allege that the Committee employed more than twenty individuals as campaign workers, but did not report payment of payroll taxes for any of these individuals. From this, they conclude that the Committee has either violated wage-and-hour laws, or that they have failed to disclose those payments in violation of federal election law.

The Committee responds by asserting that the individuals in question were not employees, but rather independent contractors, and therefore the Committee was not required to pay Social Security and Medicare taxes. The Committee provided a sworn statement from a campaign official to this effect. The Committee has provided a copy (and translation) of an "expert opinion," dated July 20, 1999, from a certified public accountant (CPA) that the campaign workers were indeed independent contractors. The CPA reached this conclusion after reviewing the contracts between the campaign workers and the campaign, and applying the standards found in Internal Revenue Service Publication 15-A, "Employers Supplemental Tax Guide." Thus, the Committee asserts that the failure to make or report such payments did not violate the Act.

3. Analysis.

Given that the Committee has provided a credible explanation of its treatment of Committee's campaign workers as independent contractors, rather than as employees, and that this position is supported by a professional opinion obtained before the complaint was filed, there is no basis for the Committee to have made any disbursement for payroll taxes. Accordingly, there would have been no need for the Committee to report such disbursements. Therefore, this

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Office recommends that the Commission find no reason to believe that the Committee violated 2 U.S.C. § 434(b) with regard to payments for payroll taxes for campaign workers during the 2000 election cycle.

C. THE WEBSITE.

1. Law.

Political committees must file periodic reports of receipts and disbursements. 2 U.S.C. § 434(a)(1). Such reports must include the name and address of each person to whom the committee makes aggregate disbursements of \$200 or more in a calendar year (or within the election cycle in the case of an authorized committee). 11 C.F.R. § 104.9(a).

2. Facts.

The complaint in MUR 5132 alleges that a firm named Arteaga & Arteaga created and maintained the Committee's campaign website, but that the Committee's disclosure reports reveal no payments to Arteaga & Arteaga.

The Committee responded to this allegation by providing the sworn statement of Arteaga & Arteaga's comptroller. He declared that his firm sent the Committee an invoice for \$5,000 on September 5, 2000 for the website services, and that the Committee fully paid the invoice three days later. The Committee also points to its October 2000 Quarterly Report, stating the website payment to Arteaga & Arteaga was reported. That report itemizes a payment of \$10,000 to Arteaga & Arteaga on September 8, 2000 for "Media/advertisement".

3. Analysis.

The allegation that the Committee did not report the website expenses fails in the face of evidence that the Committee in fact reported payments for those expenses. The complaint presented no information which would suggest that these payments do not account for the full

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cost of the website. Therefore, this Office recommends that the Commission find no reason to believe that the Committee has violated 2 U.S.C. § 434(b) with regard to payments for the website during the 2000 election cycle.

IV. RECOMMENDATIONS

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3. Find no reason to believe that Comité Acevedo Vilá Comisionado 2000, Inc., Ramón Velasco, Treasurer, and Aníbal Acevedo Vilá violated 2 U.S.C. § 434(b) with regard to payments for payroll taxes for campaign workers during the 2000 election cycle.

4. Find no reason to believe that Comité Acevedo Vilá Comisionado 2000, Inc., Ramón Velasco, Treasurer, and Aníbal Acevedo Vilá violated 2 U.S.C. § 434(b) with regard to payments for the website during the 2000 election cycle.

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8. Approve the appropriate letters.

Lawrence H. Norton
General Counsel

9/20/01
Date

BY: Abigail A. Shaine
Abigail A. Shaine
Acting Associate General Counsel

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